HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.8505 OF 2007

Between:

The Secretary to Government,
I & CAD Department, Andhra Pradesh,
Secretariat, Hyderabad and another. ...Petitioners

AND

P. Venkata Subba Rao and others. …
Respondents

:: O R D E R ::

Counsel for the petitioners : Sri J. Sudheer
Special Government Pleader

25th April, 2007

Per G.S. Singhvi, C.J.

The Secretary to Government, Irrigation and CAD Department, Andhra Pradesh and another have filed this petition under Article 226

of the Constitution of India for quashing order dated 5-11-2003 passed by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') in O.A.No.8811 of 1998.

The respondents joined service as Draughtsmen in Irrigation and CAD Department. Subsequently, they were promoted as Assistant Engineers. They filed an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the 1985 Act') questioning the legality of Memo No.650/Ser-I/I(1)/86-36, Irrigation and CAD Department, dated 15-11-1997, vide which the State Government declined their prayer for grant of monetary benefits at par with Assistant Engineers, who were promoted from the cadre of Overseers. The respondents pleaded that once they were promoted as Assistant Engineers, the government cannot discriminate them vis-à-vis other Assistant Engineers promoted from the quota of Overseers.

The Tribunal allowed O.A.No.8811 of 1998 along with O.A.No.3156 of 1998 and directed the petitioners to give monetary benefits to the respondents at par with the Assistant Engineers promoted from the cadre of Overseers. Thereafter, the State Government issued G.O.Ms.No.9, dated 3-1-2006 and implemented the Tribunal's order qua 38 out of the 40 applicants, who had filed two separate applications including O.A.No.8811 of 1998. Two of the applicants were not given that benefit on the premise that they do not fulfil the conditions of eligibility. One of them namely, K. Sambasiva Rao filed Contempt Application No.974 of 2006 by alleging that the departmental authorities have deliberately discriminated him. The Tribunal took cognizance of the contempt application and issued notice to the concerned officers. This appears to be the reason why the petitioners have filed this petition at this belated stage.

Sri J. Sudheer, learned Special Government Pleader conceded that the writ petition has been filed after a long time gap of three years and over five months counted from the date of the impugned order, but argued that the petitioners should not be non-suited only on that

ground because implementation of the impugned order has already cost the State exchequer Rs.13 crores and the financial burden may increase in future. He further argued that even though the government has already implemented the impugned order in respect of 38 applicants, the same is liable to be quashed because the Assistant Engineers promoted from the cadre of Draughtsmen constitute a class different than the Assistant Engineers promoted from the cadre of Overseers and the source from which they are promoted can be taken into consideration for according them differential treatment.

We have given serious thought to the arguments of the learned Special Government Pleader, but have not felt impressed. Rather, we are convinced that the writ petition is liable to be dismissed summarily because the petitioners have not explained the delay of three years and five months.

The 1985 Act was enacted by the Parliament to provide for adjudication of service disputes through the Administrative Tribunals because it was felt that long delays in adjudication of such disputes brought before the civil courts were affecting the efficiency of the administrative apparatus of the State. For achieving the object set out in the preamble of the 1985 Act, the Legislature designedly prescribed the period of limitation under Section 21, which is far shorter than the limitation prescribed for filing civil suit. Before establishment of the Tribunals, an employee feeling aggrieved by the action taken by the employer/competent authority in relation to his service matter, could file a suit within three years and two months. Now such an employee can seek remedy only by filing an application within the limitation prescribed under Section 21 of the Act. The opening words of Section 21 shows that the Tribunal is precluded from admitting an application filed after expiry of the period of limitation except when delay in filing of such application is condoned under Section 21 (3).

Article 226 of the Constitution does not, in terms, prescribe any period of limitation for filing a petition for issue of a direction, order or

writ including the writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition etc., but in last 57 years, the courts have evolved the rule that the High Court will not entertain a petition filed after long lapse of time. The rule of delay and laches has been evolved by the superior courts so that belated judicial intervention may not jeopardise the settled rights and crystallized situations.

In **State of M. P. v. Bhailal Bhai**[1], a Constitution Bench of the Supreme Court considered the issue of delay in the backdrop of claim for refund of tax, which is said to have been illegally collected by the State. While allowing the appeals preferred by the State against the orders of Madhya Pradesh High Court, the Supreme Court laid down the following propositions:

> 1) The special remedy provided in Art. 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil Court or to deny defence legitimately open in such actions. The power to give relief under Art. 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it.
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> 2) It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases if will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil Court and to refuse to exercise in his favour the extra-ordinary remedy under Art. 226 of the Constitution.
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> 3) The provisions of the Limitation Act do not as such apply to

the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

In **Trilokchand and Motichand v. M.B. Munshi**[2], another Constitution Bench of the Supreme Court considered the issue of delay in a case in the backdrop of the facts which were similar to those in **Bhailal Bhai**'s case (supra) and laid down the following propositions:

> "Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would taking upon itself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the extraordinary jurisdiction.
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> The question is one of discretion for this Court to follow from case to case. This Court need not necessarily give the total time to the litigant to move this Court under Article 32, even though he may be within statutory limitation. Similarly in a suitable case this Court may entertain a petition even after limitation. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose."

In **Rabindra Nath v. Union of India**[3], the Supreme Court referred to the decision in **Trilokchand and Motichand**'s (supra) and declined to interfere with the seniority of Income-tax Officers Class I Grade II on the ground of delayed filing of the writ petition. In paragraph 32, the Supreme Court observed as under:

"It seems to us that the petitioners cannot complain of the breach of Articles 14 and 16 of the Constitution in respect of acts done before the Constitution came into force. These acts in this case were (1) appointments of the respondents to Income Tax Officers Class I, Grade II Service; (2) Seniority List as existing on 1-1-1950; and (3) the Seniority Rules of 1949 and 1950, in so far as they had effect up to January 26, 1950. It will be recalled that the first seniority list was prepared as on January 1, 1950 and even if the seniority list was finally settled after the Constitution came into force, the Rules to be applied were the Seniority Rues of 1949 and 1950. In other words, if the list had been finally settled on January 1, 1950, it is clear that no appeal could be made to Articles 14 and 16 of the Constitution. The fact that the List was prepared after the Constitution came into force would not enable the petitioners to appeal to Articles 14 and 16. The position is however, different in so far as changes were made in the seniority List as a result of change in the 1952 Seniority Rules. These changes were post-Constitution and if they are hit by Article 14 and Article 16 of the Constitution, the petitioners would have the right to complain of the breach of their fundamental rights under these Articles."

In paragraph 35, the Supreme Court considered the rule of equity and observed:

"We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. It was on the ground that this Court in **Jaisinghani's case, 1967-2 SCR 703 = (AIR 1967 SC 1427)** observed that Class II officers who have been appointed permanently as Assistant Commissioners. In that case, the Court was only considering the challenge to appointments and promotions made after 1950. In this case we are asked to consider the validity of appointments and promotions made during the periods of 1945 to 1950. If there was adequate reason in that case to leave out Class II officers, who had been appointed permanently Assistant Commissioners, there is much more reason in this case that the officers who are now permanent

> Assistant Commissioners of Income-tax and who were appointed and promoted to their original posts during 1945 to 1950, should be left alone."

While rejecting the petitioner's plea that he had been making representation to the government, the Supreme Court observed:

> "…But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay. Learned counsel for the petitioners says that the petitioners were under the impression that the Departmental Promotion Committee had held a meeting in 1948 and not on April 29, 1949, and the real true facts came to be known in 1961, when the Government mentioned these facts in their letter dated December 28, 1961. We are unable to accept this explanation. This fact has been mentioned in the minutes of the meeting of the Committee which met in February 1952 and we are unable to believe that the petitioners did not come to know all these facts till 1961. But even assuming that the petitioners came to know all these facts only in December 1961, even then there has been inordinate delay in presenting the present petition."

In **P.S. Sadasivaswamy v. State of T.N.**[4], the Supreme Court held that a person aggrieved by the promotion of a junior person must approach the High Court within six months or at the most one year. The Supreme Court further held that it would be a sound and wise exercise of discretion for the Courts to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

In **Roshan Lal v. International Airport Authority of India**[5], the Supreme Court refused to reopen the question of legality of appointment on the premise that the petitioner had approached the Court after long time gap. It was argued on behalf of the petitioner that

the appointment of the respondents as Airport Officers (Operation) was made at a time when there was no sanction for the posts and, therefore, their appointment was illegal. While rejecting this ground of challenge, the Supreme Court observed as under:

> "We are afraid that it is rather late in the day for the petitioners to question the appointment of the respondents as Airport Officers (Ops.). The respondents were appointed as Airport Officers in 1975 and the present Writ Petitions were filed in 1978. We do not think we will be justified in reopening the question of the legality of the appointment of respondents as Airport Officers several years after their appointment. We also notice that the prayer in the Writ Petitions also is confined primarily to the seniority list and the consequences flowing from the seniority list."

In the light of the above, it can be said that the period of limitation prescribed under Section 21 of the Act for filing an application provides a rationale yardstick for deciding the issue of delay in filing writ petition against the order of the Tribunal. In other words, delay of more than one year in filing a petition should ordinarily be treated as unreasonable and relief should be declined to the petitioner. Of course, in a given case, the Court may, on being satisfied that there was sufficient cause for not filing petition within one year, entertain the same and give appropriate relief to the petitioner.

Insofar as this case is concerned, the petitioners have not offered any explanation for the long time gap of three years and five months. Therefore, it must be held that they are guilty of laches and the writ petition is liable to be dismissed only on that ground. Ordered accordingly.

However, it is made clear that this order shall not preclude the petitioners from challenging any other order or proceedings instituted by the respondents for implementation of the direction contained in the order under challenge.

As a sequel to dismissal of the writ petition, WPMP.No.10919 of

2007 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, C.J.

25th April, 2007.

C.V.NAGARJUNA REDDY, J.

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[1] AIR 1964 SC 1006
[2] (1969) 1 SCC 110
[3] AIR 1970 SC 470
[4] (1975) 1 SCC 152
[5] AIR 1981 SC 597